SUPREME COURT, U. S.

FILED

JUN 5 1969

JOHN F. DAVIS, CLERK

No. 1140

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

THOMAS F. KENNEY,

Petitioner,

v.

CHARLES H. HAUGH, Warden, Iowa Men's Reformatory, Anamosa, Iowa,

Respondent.

PETITIONER'S REPLY BRIEF

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INDEX

Page

Argument 1

TABLE OF AUTHORITIES

Cases:

State v. Abodelly, 123 N.W. 2d 334 2
State v. Aldeman, 150 N.W. 2d 312 4
State v. Alexander, 123 N.W. 2d 407 2
State v. Anderson, 137 N.W. 2d 384 3
State v. Arndt, 137 N.W. 2d 917 3
State v. Beckwith, 137 N.W. 2d 383 4
State v. Bond, 129 N.W. 2d 725 2
State v. Brewer, 130 N.W. 2d 592 4
State v. Brown, 133 N.W. 2d 876 3
State v. Carlson, 121 N.W. 2d 140 4
State v. Clark, 143 N.W. 2d 385 3
State v. Clauson, 130 N.W. 2d 591 3
State v. Cloud, 130 N.W. 2d 590 3
State v. Coleman, 137 N.W. 2d 382 4
State v. Conner, 122 N.W. 2d 892 1
State v. Coughlin, 123 N.W. 2d 868 2
State v. Crawford, 124 N.W. 2d 428 2
State v. Culley, 133 N.W. 2d 877 3
State v. Curry, 134 N.W. 2d 339 4
State v. Dameron, 124 N.W. 2d 139 4
State v. Dreesen, 141 N.W. 2d 917 3
State v. Dykes, 145 N.W. 2d 471 3
State v. Edwards, 121 N.W. 2d 205 1
State v. Edwards, 123 N.W. 2d 4 2
State v. Ellerbroek, 145 N.W. 2d 472 3
State v. Farrell, 128 N.W. 2d 917 2
State v. Fischer, 140 N.W. 2d 192 3
State v. Freelen, 130 N.W. 2d 590 4
State v. Fromm, 138 N.W. 2d 918 3
State v. Gaskill, 140 N.W. 2d 736 3
State v. Gerhart, 131 N.W. 2d 268 3
State v. Gilchrist, 137 N.W. 2d 590 3
State v. Grace, 123 N.W. 2d 402 2
State v. Hahn, 127 N.W. 2d 653 2
State v. Harden, 134 N.W..2d 347 3
State v. Harville, 123 N.W. 2d 926 2

	Page
State v. Hoffeditz, 121 N.W. 2d 528	1
State v. Keltner, 125 N.W. 2d 241	2
State v. Kneer, 131 N.W. 2d 200	4
State v. Kneuper, 124 N.W. 2d 133	2
State v. Legel, 122 N.W. 2d 846	2
State v. Lingle, 137 N.W. 2d 384	3
State v. Lowry, 123 N.W. 2d 868	2
State v. Lowry, 128 N.W. 2d 281	2
State v. McGill, 135 N.W. 2d 87	3
State v. Morse, 123 N.W. 2d 869	2
State v. Morse, 128 N.W. 2d 360	2
State v. Mosqueda, 129 N.W. 2d 625	2
State v. Newsom, 134 N.W. 2d 346	4
State v. Nelson, 145 N. W.2d 470	3
State v. Nicholson, 138 N.W. 2d 50	4
State v. Oliver, 141 N.W. 2d 149	3
State v. Osier, 121 N.W. 2d 528	1
State v. Parker, 137 N.W. 2d 382	4
State v. Petary, 133 N.W. 2d 70	4
State v. Rasmussen, 150 N.W. 2d 596	4
State v. Richards, 133 N.W. 2d 877	4
State v. Richardson, 131 N.W. 2d 828	3
State v. Riggles, 136 N.W. 2d 260	3
State v. Rohrick, 124 N.W. 2d 429	2
State v. Rollen, 139 N.W. 2d 319	4
State v. Ruffcorn, 130 N.W. 2d 592	3
State v. Saunders, 136 N.W. 2d 329	3
State v. Scroggins, 131 N.W. 2d 200	4
State v. Simpson, 134 N.W. 2d 347	3
State v. Slade, 132 N.W. 2d 445	3
State v. Smead, 121 N.W. 2d 536	1
State v. Torgerson, 128 N.W. 2d 926	2
State v. Truax, 146 N.W. 2d 254	4
State v. Wakeland, 126 N.W. 2d 335	2
State v. Walker, 124 N.W. 2d 140	2
State v. Watkins, 131 N.W. 2d 255	3
State v. Williams, 123 N.W. 2d 406	2
State v. Wright, 124 N.W. 2d 452	4
State v. Wulf, 122 N.W. 2d 846	1
State v. Young, 136 N.W. 2d 259	4

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PETITIONER'S REPLY BRIEF

ARGUMENT

In its Response, Respondent alleges the retroactive application of Entsminger v. State of Iowa, 386 U.S. 748 (1967) would work a hardship on the Supreme Court of Iowa because 120 Clerk's transcripts appeals were decided in the four years preceding Entsminger, supra.

Respondent's contention is misleading, as the sentences in fifty seven of the cases are completed (Citations are to North-Western Reporter, only, as Clerk's transcripts appeals were rarely included in official Iowa Reports.): State v. Edwards, 121 N.W. 2d 205 (three year sentence. Appeal decided April 9, 1963); State v. Osier, 121 N.W. 2d 528 (five years decided May 7, 1963); State v. Hoffeditz, 121 N.W. 2d 528 (one year decided May 7, 1963); State v. Smead, 121 N.W. 2d 536 (two years decided May 7, 1963); State v. Conner, 122 N.W. 2d 892 (three years decide on July 19, 1963); State v. Wulf, 122 N.W. 2d 846

($300 fine decided on July 16, 1963); State v. Legel, 122 N.W. 2d 846 (thirty days on July 1963); State v. Abodelly, 123 N.W. 2d 334 (90 days and a $500 fine decided on September 17, 1963); State v. Edwards, 123 N.W. 2d 4 (three years decided on July 17, 1963); State v. Grace, 123 N.W. 2d 402 (thirty days and a $200 fine decided September 17, 1963); State v. Williams, 123 N.W. 2d 406 (twenty days decided September 17, 1963); State v. Coughlin, 123 N.W. 2d 868 (thirty days decided October 15, 1963); State v. Lowry, 123 N.W. 2d 868 (thirty days, decided October 15, 1963); State v. Morse, 123 N.W. 2d 869 (thirty days decided October 15, 1963); State v. Alexander, 123 N.W. 2d 407 (five days decided on September 17, 1963); State v. Harville, 123 N.W. 2d 926 (fifteen days decided October 15, 1963); State v. Walker, 124 N.W. 2d 140 (five years decided October 15, 1963); State v. Crawford, 124 N.W. 2d 428 (one year decided November 12, 1963); State v. Rohrick, 124 N.W. 2d 429 (one year decided November 12, 1963); State v. Kneuper, 124 N.W. 2d 133 ($300 fine or thirty days decided October 15, 1963); State v. Keltner, 125 N.W. 2d 241 (five days decided December 10, 1963); State v. Wakeland, 126 N.W. 2d 335 ($50 fine in default thereof, to serve one day for each $3⅓, decided February 11, 1964); State v. Hahn, 127 N.W. 2d 653 (six months and $500 decided on April 8, 1964); State v. Torgerson, 128 N.W. 2d 926 ($200 fine in default thereof to serve one day for each $5 and three months suspended pending good behavior); State v. Morse, 128 N.W. 2d 360 (180 days decided May 5, 1964); State v. Lowry, 128 N.W. 2d 281 (one hundred twenty days decided May 5, 1964); State v. Farrell, 128 N.W. 2d 917 (one year on June 9, 1964); State v. Mosqueda, 129 N.W. 2d 625 (three months suspended pending good behavior decided on July 19, 1964); State v. Bond, 129 N.W. 2d 725 ($15 fine decided on July 16, 1964); State v. Ruffcorn, 130 N.W. 2d 592 (one year decided October 20, 1964); State v. Clauson, 130 N.W. 2d 591 ($15 fine decided October 20, 1964); State

v. Cloud, 130 N.W. 2d 590 ($300 fine or sixty days in jail decided October 20, 1964); State v. Watkins, 131 N.W. 2d 255 (two cases: sixty days in one and fifteen days in the other decided November 17, 1964); State v. Richardson, 131 N.W. 2d 828 ($300 fine in default thereof to serve one day in jail for each $5 decided December 15, 1964); State v. Gerhart, 131 N.W. 2d 268 (thirty days decided November 17, 1964); State v. Slade, 132 N.W. 2d 445 (fifteen days decided January 12, 1965); State v. Culley, 133 N.W. 2d 877 ($200 fine in default thereof to serve one day for each $10 decided March 9, 1965); State v. Brown, 133 N.W. 2d 876 ($400 or sixty days decided March 9, 1965); State v. Simpson, 134 N.W. 2d 347 (one year decided April 6, 1965); State v. Harden, 134 N.W. 2d 347 ($300 or fifty days decided April 6, 1965); State v. McGill, 135 N.W. 2d 87 ($25 fine decided May 4, 1965); State v. Saunders, 136 N.W. 2d 329 ($200 or twenty days decided June 30, 1965); State v. Riggles, 136 N.W. 2d 260 ($25 or five days decided June 30, 1965); State v. Gilchrist, 137 N.W. 2d 590 (three years decided October 19, 1965); State v. Lingle, 137 N.W. 2d 384 (three months decided October 19, 1965); State v. Anderson, 137 N.W. 2d 384 ($50 or ten days decided October 19, 1965); State v. Arndt, 137 N.W. 2d 917 ($100 fine and in default thereof, one day in jail for each $5 decided November 16, 1965); State v. Fromm, 138 N.W. 2d 918 ($300 fine and in default thereof one day for each $6 decided December 14, 1965); State v. Gaskill, 140 N.W. 2d 736 ($300 or sixty days decided March 8, 1966); State v. Fischer, 140 N.W. 2d 192 (fifteen days decided February 8, 1966); State v. Oliver, 141 N.W. 2d 149 ($50 or five days decided April 5, 1966); State v. Dreesen, 141 N.W. 2d 917 ($300 in default thereof to serve one day for each $5 decided May 3, 1966); State v. Clark, 143 N.W. 2d 385 (sixty days decided June 14, 1966); State v. Ellerbroek, 145 N.W. 2d 472 (one year decided October 18, 1966); State v. Dykes, 145 N.W. 2d 471 (four months decided October 18, 1966); State v. Nelson, 145 N.W. 2d 470 (thirty

days decided October 18, 1966); State v. Rasmussen, 150 N.W. 2d 596 (thirty days decided May 2, 1967).

The convictions in the following additional twenty-four cases were upon pleas of guilty:

State v. Carlson, 121 N.W. 2d 140; State v. Shouse, 121 N.W. 2d 544; State v. Dameron, 124 N.W. 2d 139; State v. Wright, 124 N.W. 2d 452; State v. Patterson, 124 N.W. 2d 447; State v. Brewer, 130 N.W. 2d 592; State v. Hood, 130 N.W. 2d 591; State v. Freelen, 130 N.W. 2d 590; State v. Kneer, 131 N.W. 2d 200; State v. Scroggins, 131 N.W. 2d 200; State v. Petary, 133 N.W. 2d 70 (two cases); State v. Richards, 133 N.W. 2d 877; State v. Curry, 134 N.W. 2d 339; State v. Newsom, 134 N.W. 2d 346; State v. Walker, 136 N.W. 2d 332; State v. Young, 136 N.W. 2d 259; State v. Beckwith, 137 N.W. 2d 383; State v. Parker, 137 N.W. 2d 382; State v. Coleman, 137 N.W. 2d 382; State v. Nicholson, 138 N.W. 2d 50; State v. Rollen, 139 N.W. 2d 319; State v. Truax, 146 N.W. 2d 254; State v. Aldeman, 150 N.W. 2d 312.

This leaves a maximum possibility of thirty-nine appeals. However, assuming some efficacy to the Iowa Supreme Court's assumption that clerk's transcripts appeals were taken to delay the beginning of a prison sentence (e.g. State v. Coleman, 137 N.W. 2d 382), and considering the possibility of parole and credit for good conduct shortening sentences, the actual number of individuals still serving sentences who would desire a re-hearing of an appeal decided before Entsminger v. State of Iowa, 386 U.S. 748, supra, is quite small.

Respectfully submitted,

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